IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 83 of 1989

with

INCOME TAX REFERENCE No 35 of 1992

with

INCOME TAX REFERENCE No 256 of 1995

with

INCOME TAX REFERENCE No 52 of 1997

with

INCOME TAX REFERENCE No 10 of 1998

with

INCOME TAX REFERENCE No 32 of 2000

and

TAX APPEAL No 1 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution : NO

of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

SURAT TEXTILE MARKET CO.OP. SHOPS & WAREHOUSE SOCIEITY LTD

Appearance: (In all matters)

MR BB NAIK Standing Counsel for the Applicant-Income Tax Department

MR JP SHAH, Advocate for Respondent-Society

CORAM : MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE A.L.DAVE

Date of decision: 27/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.L.DAVE)

#. These Income Tax References are made by the Income Tax Appellate Tribunal in respect of assessment of various assessment years of the respondent, pursuant to the directions issued by this Court under section 256(2) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for referring questions which are almost identical, though differently worded. Following the amendment in the Act, Tax Appeal No.1 of 2002 was preferred by the Revenue in respect of assessment year 1990-91 in which also similar question was formulated.

#. The question that arises for determination by this Court is worded in different references as under:

IN ITR NO.83 OF 1989 for A.Y.1974-75:

Whether, on the facts and the circumstances of the case, the Tribunal was right in concluding that the activity of the assessee was business activity and, therefore, its income was liable to be taxed under the head "business income?

IN ITR NO 83/89 for A.Ys.1975-76, 1976-77, 1978-79, & 1979-80, 1980-81, 1981-82; ITR NO.35/92 for A.Ys.1977-78, 1982-83 & 1983-84, ITR NO 256/95 for A.Y.1986-87, ITR NO 52/97 for A.Ys. 1987-88 & 88-89; ITR NO. 10/98 for A.Y.

1989-90, ITR NO 32/2000 for A.Ys. 1990-91 TO 1994-95:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the activity of the assessee co-operative society was business activity?

IN ITR NO 83/89 for A.Ys.1975-76, 1976-77, 1978-79, & 1979-80, ITR NO.35/92 for A.Ys.1977-78; 1982-83 & 1983-84:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the Co-operative Society should be taxed under the head of "Business Income" and not "Income from other sources"?

IN ITR 83/89 for A.Ys. 1980-81 & 81-82:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of the Co-operative Society should be taxed under the head of "Business Income" and not "Income from House Property"?

IN ITR NO 256/95 for A.Y.1986-87; ITR NO 52/97 for A.Ys. 1987-88 & 88-89, ITR NO 10/98 for 1989-90; ITR NO 32/2000 for A.Ys. 1990-91 TO 1994-95:

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the co-operative society should be taxed under the head "Business Income" and not under the heads "Income from House Property" or "Income from other sources?

Question formulated in Tax Appeal No. 1 of 2002:

In Tax Appeal No.1 of 2002, the question that arises is virtually the same as has been referred in respect of the assessment year 1974-75 in Income Tax Reference No.83 of 1989. However, since it is partly argumentative, the question is reframed as under:

"Whether, on the facts and the circumstances of the case, the Tribunal was right in concluding that the activity of the assessee was business activity and, therefore, its income was liable to be taxed under the head "business income?"

#. All the matters relate to the same respondent-assessee for different assessment years and raise the above common question and are, therefore, argued together by the learned counsel for both the sides.

#. In order that the contentions raised by the learned counsel for the parties can be better appreciated, the background of the matter needs to be stated.

4.1 The assessee is a cooperative society registered under the Gujarat Cooperative Societies Act, 1962. It was formed broadly with the objects of carrying on activities of providing godowns, shops, and other amenities for the trade of members and persons engaged or connected with textile trade and the society. The assessee was given on lease, land in vicinity of the ring road of Surat by the Surat Municipal Corporation, whereon it constructed a huge building complex having 1030 shops, 104 godowns and one auditorium. In addition, part of the complex was designed and constructed for use by banks and that block came to be rented to six different banks. A part of the building has been rented to the Post and Telegraph Department for running a post office. The assessee has also constructed over the land, a residential hotel and a revolving restaurant.

4.2 The construction was made by the assessee by raising funds by way of loan from the bank and raising share capital. The shops were allotted after the construction by draw of lots. Each member of the assessee was allotted a shop or a godown and no non-member is allotted either a shop or a godown by the assessee. However, as per bye-laws of the Society a member could induct other person and such person would be permitted to occupy the premises after becoming a nominal member of the society.

4.3 The assessee provides services to its members and/or occupants of the shops and godowns in the form of security, sanitation, lifts, electricity in the passage, insurance, packing etc. The assessee accepts a token rent of Re.1/- from each of the shop or godown holder. It also charges its members/occupiers for the services rendered to the members/occupiers. The assessee has income by way of rents that it charges from the banks, post office and canteens. The assessee has income by way of rent from the residential hotel and the revolving restaurant owned by it. The assessee owns an auditorium which also fetches income to the assessee whenever its

use is allowed by the assessee. For rendering the services, assessee has an administrative machinery for which permanent staff is employed.

4.4 The question that arose was whether the income of the assessee can be considered as "business income" or "income from other sources" or "income from house property". A view was taken by the assessing officer and confirmed by the C.I.T. (Appeals) that the activity of the assessee is not a business activity and the income derived by the assessee from these activities cannot be considered as business income. It was held for some assessment years that the income would be an income from "other sources" and for some years that the income would be income from house property. However, the Income Tax Appellate Tribunal took a different view and came to a conclusion that the income of the assessee was a business income and therefore, the Revenue sought these questions to be referred to this Court by the Tribunal. This Court accepted those applications and directed the Tribunal to refer above questions to this Court in exercise of powers under Section 256(2) of the Act. Following the order, the Tribunal has referred the questions as stated above and that is how the matters are before us.

#. The assessing officer observed that the assessee has given the hotel, revolving restaurant, banks, auditorium, and even shops and godowns on rent which is not the object of the society nor it is the business of the society. He came to conclusion that the provisions of Section 28 sub-section (iii) of the Income Tax Act cannot be attracted as the assessee is a cooperative society and not an association envisaged under the said provision. The assessing officer, on facts, observed that the activities of the society suggest that the society is not doing any business and therefore, it is not earning any business income. The object of the society is of carrying on activities of selling, hiring, letting, developing land and construction of buildings in accordance with the society's principles with a view to provide godowns and shops and other amenities for the trade of members and persons engaged or connected with textile trade and society. It was observed that the activities of the society are to provide facilities and amenities for the trade of members. The learned assessing officer also observed that the society made considerable efforts for bringing the market in the limelight but concluded that it cannot be said that the society had done business of its own and therefore observed that the rental income would fall under the head income from "other sources" for some assessment years and

`income from house property' for some assessment years.

#. The C.I.T. (Appeals) confirmed the view of the assessing officer after taking into consideration the material produced before him. The C.I.T. (Appeals) held that the motive of profit making is not an essential ingredient for business or profession or vocation. However, he concluded that the activity of the assessee cannot be considered as business activity.

#. The Income Tax Appellate Tribunal, after taking into consideration the various aspects and judicial pronouncements, came to a conclusion that for carrying on business activity, earning of profit or profit motive is not the sole criterion. After considering the provisions of the byelaws, the Tribunal came to the conclusion that the activity of the assessee was a "business activity" and the cooperative society was only a chosen form of organization for the purpose of carrying on business. The type of activities and the jobs undertaken by it were of such nature that they cannot be undertaken by one or a few individuals and therefore, they are undertaken through the medium of this type of organization.

#. The Revenue is aggrieved by the finding of the Tribunal that the income of the assessee is business income. The learned counsel for the Revenue contended that the income derived by the assessee is in the form of rent received by it by hiring out the shops, godowns, premises for banks, post office, canteens, hotel, revolving restaurant and auditorium. He, therefore, contended that the object of the assessee is to engage in such activities which would facilitate trade of the members or persons connected with the Society i.e. the assessee. Having banks, restaurant, hotel, etc. cannot be considered as amenities for trade of the members. He submitted that the services rendered by the assessee in the form of sanitation, lifts, etc. form part of the properties let out to the members or banks or others in the sense that they go with property and therefore, it cannot be considered that whatever the assessee earned by way of charges for the services is its business income. The business of the assessee is not to let out the building owned by it and earn therefrom and, therefore, it would amount to exploiting the property. Learned advocate Mr. Naik placed reliance on the following decisions in support of his contentions:

(i) 82 ITR 547 - Karnani Properties Ltd. v. C.I.T., West Bengal

(ii) 83 ITR 700 - S.G.Mercantile Corporation P.Ltd. v. C.I.T., Calcutta

(iii) 42 ITR 49 - East India Housing and Land Development Trust Ltd. v. C.I.T., West Bengal

The learned counsel therefore submitted that the Tribunal has erred in law and in fact in concluding that the income of the assessee is "business income".

#. Learned counsel appearing for the respondent-assessee submitted that the assessee is a cooperative society formed with the object of carrying on the activities of buying, selling, hiring, letting and developing land and construction of buildings in accordance with cooperative principles with a view to provide godowns, shops and other amenities for the trade of members and persons engaged or connected with the textile trade and the society. It is also object of the society to carry on social, cultural, recreative and educational work in connection with the members, tenants and persons using or occupying the premises built, acquired or otherwise made available or provided by the society. The learned counsel therefore submitted that the assessee is engaged in providing services, facilities and amenities to its members or occupiers of the shops, godowns, etc. engaged in business or trade of textile. Providing banking facilities, postal facilities is a part of its object. By providing such facilities, the trade of the members is sought to be facilitated and promoted. The learned counsel further submitted that likewise, auditorium is constructed by the assessee to facilitate holding of seminars and other cultural activities of its members and it is used mainly for that purpose. Learned counsel submitted that likewise, a residential hotel and revolving restaurant are constructed to attract customers of the traders and to facilitate entertainment of such customers by the traders. Learned counsel submitted that constructing and hiring out revolving restaurant or hotel or auditorium singularly, in an isolated manner, may not strictly fall within the activities or the objects of the assessee, but if the activities of the assessee are seen collectively, it would be clear that this is done only with a view to provide service to the traders and there is no object of making any profit. The assessee is a cooperative society wedded to cooperative movement. Learned counsel submitted that accessibility of non-members to hotel or revolving restaurant is only occasional and incidental. The main object is to serve or to cater the needs of the members for promoting their

trade. It was therefore urged that the Tribunal has taken a just decision in the light of the fact and law. The learned counsel placed reliance on the following decisions and urged that the questions raised in the references and the appeal may be answered in favour of the assessee:

(i) 66 ITR 596 - C.I.T., Bombay City v. National Storage Pvt. Ltd.

(ii) 175 ITR 352 - C.I.T. v. A.P.Small Scale Industrial Development Corporation

(iii) 237 ITR 454 - (1) Universal Plast Ltd. (2) Guntur Merchants Cotton Press Co.Ltd. v. C.I.T.

(iv) 243 ITR 445 - C.I.T. v. Shah Brothers

9.1 A decision of this Court dated 21.11.2002 rendered in the case of C.I.T. v. Sarabhai Private Limited in Income Tax Reference No.134 of 1988 was cited to point out that the Division Bench opined therein that the income which the assessee had received towards rent from the property leased by it should be treated as "income from house property" whereas the income received by the assessee towards different services rendered to the tenants should be treated as "Profits and gains of business or profession".

##. We have considered the rival contentions. We have been taken through the material on record in support of the contentions. The entire dispute spins around the question whether the income derived by the assessee by letting out the premises can be considered as "business income" or "income from other sources" or "income from house property". It would therefore be necessary to examine the question whether the income earned by the assessee is out of business activity. A constitution Bench of the Apex Court, in the case of Sultan Brothers Private Ltd. v. C.I.T. reported in 51 ITR 353 (SC) formulated the principle thus (as quoted by the Apex Court in Universal Plast Ltd. v. C.I.T. reported in 237 ITR 454):

"Whether a particular letting is business, has to be decided in the circumstances of each case. Each case has to be looked at from the businessman's point of view to find out whether the letting was the doing of a business or the exploitation of his property by an owner ..."

##. In order that the present case can be appreciated in the light of these principles, it has to be firstly observed that the assessee is a cooperative society founded with the objects of carrying on activities of buying, selling, hiring, letting and developing land and construction of building in accordance with cooperative principles with a view to provide godowns and shops and other amenities for the trade of members and persons engaged or connected with textile trade and the society. The object of the assessee is also to carry on social, cultural, recreative and educational work in connection with their members, tenants, and persons using or occupying the premises built, acquired or otherwise made available or provided by the society (assessee). Its further object is to provide for storage of the material of the members in the warehouses of the society, if necessary and thought fit to the members. The society is empowered to do all things it deems necessary or expedient for accomplishment of all the objects specified in the byelaws including the powers to purchase, hold, sell, exchange, mortgage, rent, lease, sublease, surrender, accept surrender, transfer or re-transfer the premises including godowns and shops and to sell by installments and subject to any terms or conditions and to make and guarantee advance to members for building or purchasing property and to erect, pull down, repair, alter or otherwise deal with any building or structure standing on the land.

##. The assessee added a clause on 24th February, 1974 in its byelaws which can be quoted thus:

> "In the interest of the society members, licences or agencies for general insurance, shall be taken in the name of the society."

It is thus clear that the society was formed particularly with an object of promoting trade and business of textile for the members. The entire activity is carried on in accordance with cooperative principles. The cooperative movement in India has deep roots and has contributed to healthy development of people from various strata of the society. The basic principle of cooperation is that the members join as human persons and not as capitalists. Cooperation is a form of organization wherein persons associate together as human beings on basis of equality for the promotion of economic interest of themselves. It is a method of doing business with ethical base. "Each for all, and all for each" is the motto of cooperation. It not only develops the latent business capacity of its members but it also

produces leaders and encourages growth of social virtues, honesty and loyalty. The assessee is a cooperative society which is formed by its members with the above stated objects which are not meant for anybody's personal gain or profit but aimed at an all round development of textile trade which will have a favourable impact on the economy. Therefore, it would be appropriate to consider the view point of the assessee also while deciding the question whether the activity of the assessee can be considered as business activity and whether the income can be considered as business income.

##. There is no dispute about the fact that the assessee provides various facilities for its members and occupiers of the property like maintenance of amenities like lifts, electricity in passages, sanitation, etc. and for that purpose, a permanent staff of more than 70 persons is employed. It provides internal telephone facilities. Security arrangement is made. The assessee arranges for advertisement of its members for promotion of their business by leaflets, signboards, etc. The assessee also provides insurance services for its members. The assessee also provides special package facility for goods of its members and several other services are rendered by forming of "SUVIDHA SAMITI" to devise more and more facilities for its members. The assessee has obtained land from Surat Municipal Corporation, developed it and has constructed such a huge complex to facilitate and promote trade of its members and only textile traders are permitted to occupy shop/s or godown/s, obviously to meet with the object for which the society is formed. All these aspects taken collectively indicate that the activity of the society is business activity though may not be aimed at making of profit. This question therefore will have to be answered accordingly.

##. Coming to the question whether the income of the assessee can be considered as business income, it has to be noted that the income of the assessee is not only in form of the charges for rendering services but it also derives income by way of rent by letting out building for running of post office, banks, canteens, hotel and revolving restaurant. It also has income by way of rent received from members/occupiers of shops and godowns. The assessee also derives income by permitting use of auditorium. All these income can not be considered as income from one and the same source and can not be put on some footing. Each of them has its own facet and dimensional view and need to be given separate consideration.

##. The assessee's income from rent received from members or occupiers of its shops and godowns has been considered as "income from business" by the Tribunal and either as income from house property or as income from other sources by the assessing officer and the C.I.T. (Appeal) for different assessment years. There is no dispute about the fact that the shops were allotted to its members and after the allotment, the members enjoyed full rights over the property. The members had authority to induct other person, the only requirement being that such inductee would be required to become a nominal member of the assessee. Statements of some of the occupants recorded by the revenue authority reveal that the rent notes were executed in respect of shops and godowns for `technical reasons' and therefore, the assessee cannot be considered as owner of the shops or godowns allotted to its members.

15.1 In C.I.T. v. Podar Cement Pvt. Ltd. and others reported in 226 ITR 625, the Apex Court ruled in context of Section 22 of the Act, that having regard to the ground realities and further having regard to the object of the Act, namely to tax the income, the owner is a person who is entitled to receive income from the property of his own right. The amount of token rent of Re.1/- charged from the allottee members is not charged with a view to exploit the property. In fact, after the shops or godowns were allotted to the members, the members alone had a right to derive income of such property which they could subject to the byelaws assign to others and derive income therefrom. In the instant case, it is the allottee member who would receive or would be entitled to receive income from the property in his own right and not the assessee and therefore, the income derived by the assessee by charging such nominal rent would not fall under the head of income from house property. Although under the common law, 'owner' means a person who has got a valid title legally conveyed to him after complying with the requirements of law such as Transfer of Property Act, Registration Act, etc., but in context of the Income Tax Act the criteria would be, who is the person who would receive income from property in his own right. In our opinion, therefore, the rent charged by the assessee by way of nominal rent from its members/allottees cannot be considered as income from house property. All the same, the token rent from the allottee-members remains an income. Section 14 of the Act provides various heads of income. The said income cannot be considered to fall under any of the categories from clause (A) to (E) and therefore it would fall under clause (F), namely, "income from other sources".

##. It is also not in dispute that the assessee charges its members for various services and amenities provided to members/occupants of the shops and godowns to meet with its objects. As discussed in the foregoing paragraphs, services rendered by assessee include internal telephone system, security, sanitation, lighting, lifts, air-conditioning, insurance services, etc. The income derived by the assessee from the occupants and/or members for rendering services would fall under the head "business income" under the head "profits and gains of business or profession" as contemplated in clause (D) of of Section 14 of the Act. These services are provided by the assessee to fulfil its object of providing godowns, shops and other amenities for the trade of members on cooperative basis. This is done with a view to promote business of the members. For rendering these facilities, the assessee has employed more than 70 permanent employees. Therefore, the income therefrom is an income derived by the assessee out of its business activity.

16.1 Apart from this, sub-section (iii) of Section 28 of the Act would also get attracted. The relevant portion of Section 28 of the Act runs as under:

"28. Profits and gains of business or profession

- The following income shall be chargeable to income-tax under the head "Profits and gains of business or profession

(i) ... ...

(ii) ... ...

(iii) income derived by a trade, professional or similar association from specific services performed for its members;

(iv) ... ... "

The assessee is an association of persons (though in form of a cooperative society) which provides specific services to its members and charges them therefor, and, therefore, the income derived by the assessee by charging its members and/or occupiers for the services rendered would fall under the head "Profits and gains of business or profession".

##. So far as the income derived by the assessee by way

of rent from banks, canteens, post office and auditorium are concerned, it is contended by the Revenue that it is not the business of the assessee to run bank or to run an auditorium or to run canteens or even to provide such services and therefore, it has to be considered as income from house property or in any case, it cannot be considered as income out of business of the assessee. It is also contended that a revolving restaurant or a hotel is not required to be constructed or run to facilitate the trade or to fulfill the object of the assessee. It cannot be considered as business income either.

17.1 The contention of the revenue is countered by the learned counsel for the assessee by submitting that banks, canteens, and post office are very much necessary to facilitate the promotion of trade of the members which is the object of the assessee. Likewise, it is contended that auditorium is constructed to facilitate holding of meetings, seminars, conventions, and cultural activities for its members. The revolving restaurant and hotel are constructed to attract more clientele to the traders and to facilitate them to entertain such customers and therefore, it must be considered to be business income or in the alternative, income from other sources.

17.2 As observed by the Apex Court in the case of Universal Plast (supra) and Sultan Brothers (supra), while considering whether an activity is business activity or not, the businessman's point of view has also to be considered. The assessee is a cooperative society formed with a view to facilitate trade and provide amenities for the trader of its members. Providing services of banks, canteens and post office are amenities for the trade of members and we find it difficult to accept the contention of the Revenue that it was not the business activity of the assessee to let out the premises for such purposes and therefore, the income derived therefrom would amount to income from house property. To support this argument, it was also contended that a cooperative bank has been started by the assessee itself and therefore, there was no need to let out the property to banks.

17.3 If an overall view of the situation is taken, it has to be considered that the venture that the assessee undertook was supposed to be a large venture wherein as many as 1030 shops and 104 godowns were to be constructed and accordingly, large volume of business transactions and turnover was also anticipated and therefore, a separate block for providing banking services of as many as six banks was contemplated, planned and executed.

This has been done by the assessee only to provide amenity to its members so that they may not be required to spend more time, energy or manpower in going out for banking purposes. Banking has its own importance in trade and commerce these days and cash transactions are a matter of past. It has also to be kept in mind that as many as 1029 shops and 103 godowns are used by members/ occupiers for the trade of textile and it may not be physically possible for a single cooperative bank to cater to the requirement of such large number of traders and large volume of business. It is the assessee who would have the best information and would be the best person to judge as to what could be the quantum of requirement of banking services to cater to the need of its members and therefore, in our opinion, letting out the premises to banks was with a view to facilitate and provide amenity to its traders and therefore, would fall within the term "business activity" of the assessee.

17.4 As regards letting out a part of the premises to the post office also, these days when trade and commerce is expanding far from being restricted to local markets, traders would require services of postal department and the action of the assessee in arranging for post office in the premises itself, in our view, is an act of providing amenity to its members for promotion of their trade. This service is in no manner different from services of banks from businessman's point of view as it helps the traders in their business. The income that is derived by the assessee by way of rent is only incidental for providing the services and not aimed at making profit out of the property. The rent is only incidental and may be considered, in facts of the case, a consideration for the purpose of undertaking required periodical maintenance and repairs of the premisses but in any event, it would be too far fetched to say that the premises are let to derive profit out of the property, and therefore, the income derived by the assessee by way of rent from the banks and post office would fall under the head "business income" and cannot be considered as "income out of house property" or "income from other sources".

17.5 The canteens are provided and are being run in the complex. It is nobody's case that the canteens are meant to provide luxurious facilities. Where so many people come for business during the day, many of whom may be coming from distant places, services of canteen would cater to the basic need of people. It would save them from going to distant places for meals and refreshments. Providing of canteen has to be construed as service

planned and provided by assessee as an amenity to facilitate trade. It is of no consequence whether it is given on rental or contractual basis to be run by others or is run departmentally by the assessee. In either case, the income derived is by fulfillment of the object of the assessee to provide amenity to its members in trading business and has therefore to be construed as business income.

17.6 So far as the income from auditorium is concerned, auditorium is permitted to be used as and when required either by its members or on occasions by outsiders on charges. It appears from record that auditorium was planned for being used to facilitate holding of seminars and other educational activities for the members. It is evident from the Surat Textile Market Newsletter forming part of the paper-book that during July 1975 to December 1975, as many as 28 conferences, seminars, meetings, etc. were conducted. It also appears that cultural programmes and dramas were arranged in the auditorium. The object of the assessee is also to carry on social, cultural, recreative and educational work in connection with their members, tenants and persons using or occupying the premises built, acquired or otherwise made available or provided by the society. Thus, it is clear that the auditorium is mainly used by the assessee for fulfillment of its objects and if it is permitted to be used by outsiders occasionally that would not be a deviation from its object and will be only an incidental use of the premises and not a main source of income from the property. That incidental use cannot be regarded as an act of deriving income from the property, and, therefore, in our view, the income derived by the assessee by permitting use of the auditorium by collecting charges therefor cannot be considered as "income from house property" or "income from other sources" but would fall under the head "business income".

##. So far as the income of the assessee derived from the rental of revolving restaurant and residential hotel, it is not possible for us to accept the contention of the assessee that the hotel and the revolving restaurant were contemplated and constructed for fulfilling the objects of the assessee to facilitate trade of the members. It would be too far fetched and remote to contemplate that it would attract more clientele and provide facility to the members to entertain such clients or customers especially when they are open to the general public. Construction of hotel or revolving restaurant was not the object of the assessee nor can it be said that the members could not have run the business conveniently or

could not have promoted business without these facilities. Availability of a revolving restaurant or a residential hotel in itself is not an amenity for trade of the members and providing such facility therefore cannot be considered as an act to fulfil the object of the assessee.

18.1 In our view, there is no nexus between the objects and the said activity (constructing and letting out revolving restaurant and the hotel) of the assessee, more so, when canteens are already provided to cater to the basic needs of members and persons concerned with society. Luxury can never take the colour of necessity. Even from businessman's point of view, for that matter from any point of view, a revolving restaurant or a residential hotel cannot be construed to be properties required for fulfillment of the objects of the assessee-society.

18.2 It has then to be examined whether this income from the revolving restaurant and hotel would fall under the head of income from house property or income from other sources. It is a settled proposition of law that where a separate head of income is provided under Section 14, and the income is from such source, it has to fall under that specific head. This income i.e. income from the revolving restaurant and the hotel would therefore fall under the head of `income from house property'. The Tribunal was therefore not right in holding that the income derived by the assessee even from letting out the revolving restaurant and residential hotel was "business income". We may hasten to add that none of the authorities below have bifurcated the various sources of income of the assessee and as such, no consideration is given to such income separately. The answer to the question therefore will have to be that the income of the assessee, other than the income from revolving restaurant and residential hotel, would be "business income" and the income from revolving restaurant and residential hotel would be "income from house property".

##. We, therefore, answer the questions as under:

QUESTION IN ITR NO.83 OF 1989 for A.Y.1974-75, TAX APPEAL NO 1 OF 2002 for A.Y. 1990-91:

Whether, on the facts and the circumstances of the case, the Tribunal was right in concluding that the activity of the assessee was business activity and, therefore, its income was liable to

be taxed under the head "business income?

Answer :
Answer to the first part of the question would be in the affirmative in favour of the assessee and against the Revenue and answer to the second part of the question would be as under:

The income of the assessee would be "business income", except the income derived by way of rent from the residential hotel and revolving restaurant.

QUESTION IN ITR NO 83/89 for A.Ys.1975-76, 1976-77, 1978-79, & 1979-80, 1980-81, 1981-82, ITR NO.35/92 for A.Ys.1977-78, 1982-83 & 1983-84, ITR NO 256/95 for A.Ys.1986-87, ITR NO 52/97 for A.Ys. 1987-88 & 88-89, ITR NO 10/98 for A.Y.1989-90, ITR NO 32/2000 for A.Ys. 1990-91 TO 1994-95:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the activity of the assessee co-operative society was business activity?

Answer:
In the affirmative,in favour of the assessee and against the Revenue.

QUESTION IN ITR NO 83/89 for A.Ys.1975-76, 1976-77, 1978-79, & 1979-80, ITR NO.35/92 for A.Ys.1977-78, 1982-83 & 1983-84:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the Co-operative Society should be taxed under the head of "Business Income" and not "Income from other sources"?

Answer:
In the affirmative. The income of the assessee would be "business income", except the income derived by way of rent from the residential hotel and revolving restaurant.

QUESTION IN ITR 83/89 for A.Ys. 1980-81 & 81-82:

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the income of the Co-operative Society should be taxed under the head of "Business Income" and not "Income from House Property"?

Answer:
In the affirmative. The income of the assessee would be "business income", except the income derived by way of rent from the residential hotel and revolving restaurant. The income derived by way of rent from residential hotel and revolving restaurant would be income from house property.

QUESTION IN ITR NO 256/95 for A.Y.1986-87, ITR NO 52/97 for A.Ys. 1987-88 & 88-89, ITR NO 10/98 for 1989-90, ITR NO 32/2000 for A.Ys. 1990-91 TO 1994-95:

Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income of the co-operative society should be taxed under the head "Business Income" and not under the heads "Income from House Property" or "Income from other sources?

Answer:
In the affirmative. The income of the assessee would be "business income", except the income derived by way of rent from the residential hotel and revolving restaurant. The income derived by way of rent from residential hotel and revolving restaurant would be income from the house property.

##. All the Income Tax References and the Appeal stand disposed of accordingly. There shall be no order as to costs.

(R.K.Abichandani, J.)

(A.L.Dave, J.)

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(sunil)